IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 1773 OF 2005

Pavita Shripad Takale & Anr. ... Applicants

Vs.

Thinking Machines Pvt.Ltd. & Ors. Respondents

Shri Harshad Palwe for the applicants.

Shri U.V.Nikam, APP, for State.

CORAM: S.K.SHAH,J.

DATE : 17th October, 2006.

P.C.

1. Rule, returnable forthwith. Heard Counsel on both sides finally for disposal of the Application.

2. By this Application, the original accused Nos. 2 & 3 have challenged the order passed by the Sessions Judge, Nashik, in Revision, dated 4.8.2004 whereby he set aside the order passed by the Magistrate on 1.8.2002 who issued process only against accussed no.1 and dismissed the case against accused Nos. 2 to 5.

3. The learned Counsel for the applicant submits that there is no allegation in the complaint that the original accused Nos. 2 and 3 were in charge of and

responsible for the conduct of business of the Respondent No.1 company. After the complaint was lodged before the Magistrate, the Magistrate had heard the learned Counsel for the Complainant and issued summons under section 138 of the Negotiable Instruments Act against accused No.1 only and dismissed the case as against accused Nos. 2 to 5. The order was challenged in revision before the Additional Sessions Judge, Nashik, who passed the impugned order.

4. The contention raised on behalf of the applicant is that there is no allegation in the complaint as to how the original accused Nos.2 and 3 were in charge of and responsible for the conduct of the business of accused No.1 company and, therefore, the learned Additional Sessions Judge has wrongly setaside the order passed by the learned Magistrate dismissing the case as against accused Nos.2 & 3. He relied on the decision of the Apex Court in the case of S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and another reported in AIR 2005 SC 3512.

5. Perusal of the complaint shows that the only allegation made against accused Nos. 2 and 3 is that accused Nos. 2 to 5 are the directors of the accused No.1 Company and hence they are made accused and notice was served on them as co-accused. But there is no allegation made in the complaint that accused Nos. 2 and 3 were responsible for conduct of the business of the company or in charge of the business of the company.

5. The requirements of the provisions of section 141(1) are that every person who at the time of committing offence was in charge of and was responsible to the company for the conduct of business of the company shall be deemed to be guilty of the offence and shall be liable to be prosecuted against the company. Thus, what the Apex Court has held is that every person who is in charge of and responsible for the coduct of the business of the company alone can be prosecuted

6. In the present case, since the accused Nos. 2 and 3 were not conducting business of and were not responsible for the conduct of the businss of the company, the process cannot be issued against them. The learned Additional Sessions Judge therefore committed illegality in setting aside the order passed by the Magistrate who had dismissed the case as against accused Nos.2 to 5

7. Under the circumstances, the order passed by the learned Additional Sessions Judge, Nashik, is hereby set aside insofar as it relates to the issue of process for the offence punishable under Section 138 of the Negotiable Instruments Act against the accused Nos. 2 and 3.

The Criminal Application is, therefore, allowed.

--

(S.K.SHAH,J.)